

P-442/EM-90-245 APPROVING TARIFF FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Request by AT&T
Communications of the Midwest Inc. to
Introduce Rates and Terms Related to the
Provision of State Calling Service

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ORDER APPROVING TARIFF FILING

PROCEDURAL HISTORY

On April 9, 1990, AT&T Communications of the Midwest, Inc. (AT&T) filed a tariff with the Commission regarding an offering that AT&T entitled Minnesota State Calling Service (SCS/MN).

On June 27, 1990, the Minnesota Department of Public Service (the Department) filed its Report of Investigation and Recommendation urging disapproval of AT&T's tariff on the grounds that it was unfair and discriminatory towards private sector clients.

On July 9, 1990, the Company filed a response to the Department's June 27, 1990 comments.

On July 10, 1990 the Minnesota Department of Administration (ADMIN) filed comments regarding the issue of price discrimination.

On July 30, 1990 the Department filed its comments regarding the responses of the Company and ADMIN.

On August 14, 1990, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must decide whether it will allow AT&T to tariff a service it entitles State Calling Service (SCS/MN).

Nature of the Service Sought to be Tariffed

Custom Network Services (CNS) are a class of telecommunications service designed to meet the needs of customers who need to communicate on a high volume basis between many fixed but geographically dispersed locations. The two major types of CNS are: Message Toll Service (MTS) and dedicated channel service known as Wide Area Telephone Service (WATS). AT&T currently has tariffed 5 varieties of CNS. AT&T proposes to tariff SCS/MN in Minnesota as a sixth variety of CNS.

As proposed by AT&T, SCS/MN will only be available to state and local government entities and will be offered in two options.

SCS Option 1 provides the same service and utilizes the same technology as AT&T's presently tariffed CNS variety entitled Software Defined Network (SDN).

SCS Option 2 provides the same service and utilizes the same technology as AT&T's presently tariffed CNS variety entitled MEGACOM WATS.

Despite these similarities between the "new services" proposed for tariffing herein and AT&T's currently tariffed services, AT&T proposes to limit the "new services" to public sector subscribers and charge them lower rates than it charges subscribers to SDN and MEGACOM WATS. Presumably any public sector customers already subscribing to SDN or MEGACOM WATS would merely transfer over to SCS/MN Option 1 or Option 2 and pay lower rates for the same service they were receiving as SDN or MEGACOM WATS.

In essence, then, SCS Option 1 is a special pricing plan for public sector clients using SDN technology and SCS Option 2 is a special pricing plan for public sector clients using MEGACOM WATS technology.

Statutory Prohibition Against Unreasonably Discriminatory Rates

Classification of SCS/MN as a pricing plan, however, is not dispositive of whether SCS/MN may be tariffed, however.¹ The question before the Commission in this matter is not whether SCS/MN is a new service, but whether in light of the currently tariffed SCS offerings of MEGACOM WATS and SDN, it must be rejected as violating the statutory prohibition against unreasonably discriminatory rates.

The Commission will assess the proposed tariff in light of the statutory standards articulated in two statutes, Minn. Stat. § 237.60 and Minn. Stat. § 237.09.

¹ Whether a proposal for a service subject to emerging competition is a "new pricing plan" or a "new service" is determinative of when the new proposal goes into effect. Custom network services (SCN) are classified as subject to emerging competition by Minn. Stat. § 237.59, subd. 1 (7). As a service subject to emerging competition, then, AT&T's SCS/MN proposal would go into effect in accordance with Minn. Stat. § 237.60, subd. 2 (f) within 10 days after the telephone company filed a price list and an incremental cost study for the service with the Department and the Commission if it is a new service. By contrast, if it is merely a "pricing plan" for currently offered services it would become effective 30 days after AT&T provides notice as required by Minn. Stat. § 237.60, subd. 2 (e).

1. Unreasonable Rate Discrimination: Minn Stat. § 237.60

Minn. Stat. § 237.60 provides in pertinent part:

No telephone company shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory.

Rate discrimination occurs when a firm charges different rates to different classes of customers while incurring the same cost of service. Based on its forestated analysis of AT&T's proposed SCS/MN service and its currently offered CNS services, the Commission finds that AT&T proposes rate discrimination between its private sector customers and its public sector customers. In accordance with Minn. Stat. § 237.60, the Commission must reject the SCN/MN tariff if such rate discrimination is unreasonable.

AT&T articulates a narrow test for determining whether a particular rate discrimination is unreasonable. According to AT&T, rate discrimination between classes of customers is not unreasonable if the customer classifications have a rational basis. The Commission notes that not all articulable distinctions between customer classifications are "rational" and understands AT&T's proposed test to require that the classification must be "rational" in light of Minnesota telecommunications practice and regulatory policy. The Department, on the other hand, argued that negative policy effects resulting from the creation of a separate classification for government were sufficient to render resulting discriminatory rates unreasonable.

The Commission need not decide which approach to determining unreasonableness is more appropriate because on the facts of this case the proposed classification and resulting rate discrimination are reasonable from both approaches.

To demonstrate the "rational basis" for the government sector classification, AT&T points to four factors. First, the Federal Communications Commission (FCC) in approving SCS, and AT&T's competitors in designing services similar to SCS (i.e. CNS restricted to state and local governments) appear to acknowledge that state and local customers can be most efficiently served as a separate customer category. Second, state and local governments have distinct requirements and restrictions placed on them that major private corporations do not have. Third, State and local governments may not have the ability to wait a long period of time for tariffing and approval as major corporate customers can. Fourth, some of AT&T's competitors have chosen to tariff CNS services only to state and local government customers at lower rates than AT&T has for the CNS services which it currently offers to both private and public sector customers. In such circumstances, AT&T cannot realistically compete with these companies in the provision of CNS to state and local government. To be competitive with these companies in bidding to provide CNS to state and local governments, therefore, AT&T would need to tariff a separate and lower rate for this market. AT&T argues that these factors distinguish state and local government customers from other major customers and provide a "rational basis" for separate classification of these customers.

The Commission does not view the FCC's approval of a separate public sector customer classification for SCS in the interstate context as binding or persuasive of the intra-state issue before the Commission. However, based on the other particular facts presented by AT&T, the Commission finds that there is a rational basis in light of current Minnesota telecommunications practice and regulatory policy for a separate CNS classification for public sector customers. At the same time,

utilizing the Department's approach to the "reasonableness" determination and evaluating the policy considerations involved in this issue, the Commission finds that the value of promoting AT&T's ability to compete for the public sector SCN market justifies the establishment of a separate customer classification for public sector customers and renders the resulting rate discrimination between private and public sector customers reasonable.

2. Discrimination Prohibited Under Minn. Stat. § 237.09

Minn. Stat. § 237.09 prohibits discrimination in the following terms:

No telephone company,..., shall, directly or indirectly, in any manner, knowingly or wilfully charge...any person, firm or corporation, a greater or less compensation for any intrastate service rendered...by it than it charges...any other firm, person or corporation for a like and contemporaneous intrastate service under similar circumstances.

Analysis of the AT&T's proposed tariff in light of Minn. Stat. § 237.09 proceeds similarly. There is no dispute that the Company proposes to charge lower rates for its SCS/MN subscribers (public sector entities) than it charges subscribers to SDN and MEGACOM WATS (private sector entities) and will be prohibited from doing so by Minn. Stat. § 237.09 if these services are "like and contemporaneous" and offered "under similar circumstances".

A. "...like and contemporaneous intrastate service..."

The Commission finds that AT&T's proposed SCS/MN options are intrastate services which are "like and contemporaneous" to its currently offered SDN and MEGACOM WATS. The fact that SCS/MN is offered solely to the public sector subscribers does not significantly alter the nature of the service; the nature of the service is not affected by the identity of the subscriber.

B. "...under similar circumstances.."

This phrase requires that the Commission bring a measure of discretion into the determination, similar to the qualification expressed in Minn. Stat. § 237.60, subd. 3 that rate discrimination be "unreasonable" before the Commission is prohibited from approving it.

The factors previously enumerated in the analysis under Minn. Stat. § 237.60, subd. 3 and which formed the "rational basis" for the public sector CNS customer classification also demonstrate that the "circumstances" under which AT&T would offer CNS to public sector customers are sufficiently dissimilar from those under which it offers CNS to private sector customers to avoid prohibition under Minn. Stat. § 237.09.

Application of Minn. Stat. § 237.071

AT&T asserts that if SCS/MN were unreasonably discriminatory under Minn. Stat. § 237.60, subd. 3, it should be allowed under recent revisions to the Telephone Act codified as Minn. Stat. § 237.071. The Commission need not reach this question, and specifically declines to do so, because it has found that SCS/MN is not unreasonably discriminatory under Minn. Stat. § 237.60, subd. 3.

CONCLUSION

AT&T's proposal to provide SCS/MN is not discriminatory under Minn. Stat. § 237.09 and does not propose unreasonably discriminatory rates prohibited by Minn. Stat. § 237.60, subd.3. In addition, the proposed rates for SCS/MN cover the incremental costs of providing the service. Accordingly, the Commission will approve the tariff for SCS/MN as filed.

ORDER

1. The tariff proposed by AT&T Communications of the Midwest, Inc. (AT&T) for its Minnesota State Calling Service (SCS/MN) is approved.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)